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ACTION ARA-10

INFO OCT-01 ISO-00 DHA-02 L-03 H-01 SCS-03 SCA-01  
IO-13 CIAE-00 DODE-00 INR-07 NSAE-00 PA-01  
USIA-06 PRS-01 SP-02 /051 W

R 142100Z APR 77  
FM AMEMBASSY BUENOS AIRES  
TO SECSTATE WASHDC 0017

SECTION 1 OF 2 BUENOS AIRES 2744

E.O. 11652: N/A  
TAGS: SHUM AR  
SUBJECT: HUMAN RIGHTS IN ARGENTINE SUPREME COURT

REF: STATE 78969

1. SUMMARY. A GROUP PETITION ON BEHALF OF 425 MISSING PERSONS WAS PRESENTED TO THE SUPREME COURT APRIL 11 MAKING THE COURT TO INVESTIGATE DISAPPEARANCE CASES AND THE BREAKDOWN OF THE LEGAL MECHANISM OF HABEAS CORPUS. THE SUPREME COURT ON APRIL 6 REFUSED TO RULE ON A PETITION BY LAWYER JOSE LEVITAN REQUESTING THE COURT TO INTERCEDE WITH THE MILITARY JUNTA TO OBTAIN INFORMATION ON HIS MISSING SON. IN ANOTHER FEDERAL COURT CASE, A JUDGE CRITICIZED INTERIOR MINISTER HARGUINDEGUY FOR OBSTRUCTING THE COURT'S RESPONSIBILITIES IN STATE OF SIEGE DETENTION CASES AND ASKED PRESIDENT VIDELA TO ASSURE THE RELEASE OF A DETAINED LAWYER.

END SUMMARY.

2. A PETITION WAS PRESENTED TO THE SUPREME COURT APRIL 11 ON BEHALF OF THE NEXT-OF-KIN CALLING UPON THE HIGHEST TRIBUNAL IN THE LAND TO INVESTIGATE THE DISAPPEARANCE OF TWELVE PERSONS WHO WERE ABDUCTED BY FORCE IN ARGENTINA BY "ARMED GROUPS WHICH PRIMA FACIE ACTED WITH AUTHORITY." THE TWELVE INDIVIDUALS ARE:

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OSCAR SMITH, LEADER OF THE LIGHT AND POWER UNION; MAURICIO

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ARGENTINA PROJECT (S200000044)  
U.S. DEPT. OF STATE, A/RPS/IPS  
Margaret P. Griefed, Director  
Release ( ) Excise ( ) Deny  
Exemption(s):  
Classify as ( ) In Part ( ) In Full  
( ) Classify as ( ) Extend as ( ) Downgrade to  
Date Declassify on Reason

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AMICLAR LOPEZ, A LEADING PROTESTANT CHURCH FIGURE AND FORMER DELEGATE TO THE WORLD COUNCIL OF CHURCHES; TILO WENNER, A POET AND NEWSPAPER EDITOR; TERESA ALICIA ISRAEL, A CIVIL RIGHTS LAWYER; GUSTAVO JOSE PASIK; MARIHA LETICIA VILTE; BALDOMERO JUAN VALERA; AUGUSTO MARIA CONTE MACDONNELL; VICTOR VAZQUEZ; DORA DEBORAH FRISZMAN; AND PABLO HERMER DORIGO. THE PETITION ALSO ANNEXED THE NAMES OF 413 ADDITIONAL INDIVIDUALS WHO DISAPPEARED IN SIMILAR FASHION, BUT THEIR NAMES WERE NOT IMMEDIATELY AVAILABLE FROM NEWSPAPER ACCOUNTS.

3. THE PETITION WAS DRAFTED BY LEADING CONSTITUTIONAL LAW SPECIALIST GENARO R. CARRIO AND COSIGNED BY SEVEN OTHER PROMINENT AND RESPECTED LAWYERS, INCLUDING FORMER DEPUTY RAUL R. ALFONSIN AND FORMER PRESIDENTIAL PRESS SECRETARY LUIS CAEIRO (BOTH UCRP), EX-UNDERSECRETARY OF HUMAN RESOURCES AUGUSTO CONTE MACDONNELL (PDC) AND EMILIO MIGNONE, A FORMER UNDERSECRETARY OF EDUCATION WHO ALSO SERVED IN THE OAS IN WASHINGTON FOR SEVERAL YEARS. MACDONNELL'S SON IS AMONG THE MISSING PERSONS LISTED IN THE PETITION AND DR. MIGNONE ALSO HAS A DAUGHTER WHO IS MISSING. THE PETITIONING LAWYERS ARE CONNECTED WITH THE PERMANENT ASSEMBLY FOR HUMAN RIGHTS.

4. THE PETITION POINTS OUT THAT HABEAS CORPUS REQUESTS SUBMITTED ON BEHALF OF THE MISSING PERSONS BEFORE LOWER COURTS HAVE PROVEN FUTILE SINCE THE RESPONSE FROM GOVERNMENT AGENCIES INVARIABLY IS THAT THERE IS NO RECORD OF THEIR HAVING BEEN ARRESTED. SUCH A SITUATION, CONTINUES THE PETITION, REFLECTS A GRAVE UNDERMINING OF THE STATE'S DUTY TO PROTECT LIFE AND CONSEQUENTLY A DEPRIVATION OF JUSTICE... "THE LIVES OF THE INHABITANTS OF THE NATION ARE SUBJECT TO A RISKY UNCERTAINTY, TRANSLATED IN MANY CASES IN DISAPPEARANCES IN WHICH LIVES ARE ENDANGERED BECAUSE MANY TIMES DEATH HAS BEEN THE EFFECTIVE RESULT." ARGUING THAT "WE BELIEVE THAT ARGENTINA SHOULD AND CAN FIND, FROM WITHIN ITS OWN MIDST, THE MEANS NECESSARY TO OVERCOME ANY CRISIS INVOLVING VIOLATION OF BASIC RIGHTS," THE PETITIONERS ASK THE

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SUPREME COURT TO INTERVENE AND INVESTIGATE THE MISSING PERSONS CASES AND ALSO TO BRING THE ISSUE TO THE ATTENTION OF THE MILITARY JUNTA TO ENSURE THAT THE JUNTA DISCHARGES ITS STATUTORY RESPONSIBILITIES (UNDER THE POLITICAL PROCESS BEGUN MARCH 24, 1976) IN THE MATTER.

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5. ALTHOUGH A PRINCIPAL ARGUMENT OF THE BRIEF IS THE FAILURE OF WRITS OF HABEAS CORPUS IN THE LOWER COURTS TO ACHIEVE EFFECTIVE RESULTS, THE PETITION TECHNICALLY IS NOT A WRIT OF APPEAL TO THE SUPREME COURT. ARTICLE 101 OF THE ARGENTINE CONSTITUTION PROVIDES THAT THE SUPREME COURT WILL EXERCISE ORIGINAL AND EXCLUSIVE JURISDICTION ONLY IN CASES PRESENTED BY A FOREIGN STATE OR A PROVINCE OF THE NATION. OTHERWISE, THE SUPREME COURT IS TO ACT AS A HIGHER COURT OF APPEAL. NEVERTHELESS, WE UNDERSTAND THAT PRECEDENT DOES EXIST FOR THE COURT GRANTING ITSELF ORIGINAL JURISDICTION IN CASES INVOLVING EXCEPTIONAL CIRCUMSTANCES. TO DATE, THE COURT HAS NOT RESPONDED ON THE GROUP PETITION.

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R 142100Z APR 77  
FM AMEMBASSY BUENOS AIRES  
TO SECSTATE WASHDC 0018

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6. DR. CAIERO, A FORMER AIDE TO PRESIDENT ILLIA (WHO MET RECENTLY WITH MS. DERIAN IN BUENOS AIRES), TOLD EMBASSY (PROTECT) THAT PETITIONERS DID NOT EXPECT COURT TO ACCEDE TO THE REQUEST. THE PURPOSE IS TO INFLUENCE PUBLIC OPINION AND ENLIGHTENED OFFICIALS IN THE JUDICIAL SYSTEM AND IN THE GOVERNMENT WITH A TIGHTLY ARGUED LEGAL BRIEF. ALTHOUGH SEVERAL OF THE LAWYERS ARE EX-POLITICIANS, CAIERO DENIED THAT THE PETITION WAS A POLITICAL ACT. THE LAWYERS INVOLVED HAVE UNIMPEACHABLE POLITICAL RECORDS AND THE TEN MISSING PERSONS WERE CAREFULLY SELECTED TO ENSURE THEY HAD NO SUBVERSIVE OR TERRORIST BACKGROUND. DR. MIGNONE'S DAUGHTER WAS EXCLUDED, FOR EXAMPLE, BECAUSE OF HER ALLEGED DEGREE OF INVOLVEMENT IN SUCH ACTIVITIES.

7 ASKED WHETHER THE US STAND ON HUMAN RIGHTS IN ANY WAY HAD INFLUENCED THE PETITIONERS TO SUBMIT THEIR BRIEF TO THE SUPREME COURT, CAIERO EMPHATICALLY DENIED THIS. QUITE THE CONTRARY, THE

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PETITIONERS HAD PLANNED TO ACT EARLIER, BUT THE BILATERAL FLAREUP HAD CAUSED THEM TO POSTPONE THEIR ACTION FOR FEAR THEY WOULD BE ACCUSED OF CONSPIRING WITH A FOREIGN POWER. (CAIERO ALSO CONFIDED THAT PRESIDENT VIDELA'S AIDES HAVE ASKED UCRP TO DESIST FROM TACTIC OF SEEKING FOREIGN SUPPORT FOR EFFORTS TO EFFECT RELEASE OF EX-SENATOR SOLARI IRIGOYEN FROM PRISON. PRESIDENT'S AIDES CLAIMED THAT ON SEVERAL OCCASIONS VIDELA WAS CLOSE TO GETTING SOLARI FREED, BUT HAD TO RETREAT IN FACE OF HARDLINERS'

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ARGUMENT GOA SHOULD NOT GIVE IN TO FOREIGN PRESSURES. NEVERTHELESS, CAIERO BELIEVES UCRP WOULD NOT HAVE BEEN ABLE TO GET AS FAR AS IT HAS IN THE SOLARI CASE, HAD IT NOT BEEN FOR FOREIGN INTEREST IN THE CASE, AND HE THANKED MS. DERIAN FOR HER RECENT EXPRESSION OF CONCERN AND WILLINGNESS TO HELP.)

8. A PETITION PRESENTED BY DR. JOSE LEVITAN TO THE SUPREME COURT ON APRIL 5 ASKING IT TO INTERCEDE WITH PRESIDENT VIDELA, THE MILITARY JUNTA AND THE COMMANDER OF THE FIRST ARMY CORPS TO OBTAIN INFORMATION ABOUT HIS MISSING SON, WAS REJECTED BY THE COURT THE FOLLOWING DAY. THE COURT CLAIMED IT DID NOT HAVE ORIGINAL JURISDICTION IN THE CASE. LEVITAN HAD ARGUED IN HIS PETITION, BELIEVED TO BE THE FIRST OF ITS KIND TO THE MILITARY GOVT, THAT THE SUPREME COURT HAS EQUAL STATUS TO THE JUNTA, AND CLAIMED THAT THE COURT WAS THE ONLY GUARANTEE LEFT IN FINDING OUT THE CAUSE AND PLACE OF HIS SON'S DETENTION, AFTER TWO WRITS OF HABEAS CORPUS FAILED TO PRODUCE RESULTS. THE 23-YEAR OLD SON CLAUDIO LEVITAN HAS BEEN MISSING SINCE BEING SEIZED BY ARMED MEN CLAIMING TO BE SECURITY POLICE IN OCT. 1976. YESTERDAY (APR 13) DR. LEVITAN, A CONSTITUTIONAL LAWYER, REPEATED THE SECOND REQUEST IN HIS ORIGINAL PETITION IN WHICH HE ASKED THE COURT TO ORDER THE MILITARY JUNTA TO PERMIT THE DESPATCHING OF A TELEGRAM TO POPE PAUL. LEVITAN CLAIMS THAT HE PAID 100 DOLLARS FOR THE TELEGRAM WHICH WAS NEVER SENT AND THAT HE WAS WARNED NOT TO PRESS THE MATTER OR FACE "CONSEQUENCES."

9. LA OPINION TODAY (APR 14) POINTED OUT THAT WHEREAS THE LEVITAN PETITION REQUESTED COURT ACTION ON BEHALF OF HIS SON, THE GROUP PETITION ASKS THE COURT TO REMEDY THE LEGAL MECHANISM OF HABEAS CORPUS WHICH IT CLAIMS IS NOT FUNCTIONING. GIVEN THIS DIFFERENCE, THE PAPER SUGGESTS THE COURT SHOULD ASSUME ACTION IN THE LATTER PETITION IN ORDER TO ASSURE JUDICIAL GUARANTEES TO PERSONS NOT GUILTY OF SUBVERSIVE ACTIONS. THE BA HERALD (APR 13) ALSO STRONGLY RECOMMENDED THAT THE COURT TAKE

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ACTION ON THE PETITIONS AND THAT THE GOVT MOVE BACK TOWARD A FULL RULE OF LAW. "THE PETITIONS TO THE SUPREME COURT PROVIDE AN OPPORTUNITY TO CREATE A JUDICIAL PROCESS TO DEAL WITH THE

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CONSEQUENCES OF THE CRUEL AND TERRIBLE WAR UNLEASHED BY LEFTWING TERRORISTS."

10. IN ANOTHER JUDICIAL DEVELOPMENT, THE FEDERAL PENAL COURT THIS WEEK CALLED UPON PRESIDENT VIDELA TO FREE A LAWYER, CARLOS MARIANO ZAMORANO, WHO HAS BEEN HELD UNDER STATE OF SIEGE SINCE DECEMBER 1974. IN ITS RULING THE COURT CHARGES INTERIOR MINISTER HARGUINDEGUY WITH "INADMISSABLE LACK OF RESPECT FOR THE COURT" IN FAILING TO ACT ON THE COURT'S REQUESTS FOR INFORMATION ON THE CHARGES AND CAUSES FOR AZMORANO'S CONTINUED DETENTION. THE COURT ORDERED THAT ZAMORANO BE RELEASED IMMEDIATELY AND THAT IF NOT FREED, "THE FUNCTIONARY RESPONSIBLE BE CHARGED WITH MISCONDUCT AND FAILING IN HIS DUTIES." THE VERDICT EMPHASIZED THAT THE NATIONAL JUDGES HAVE THE UNAVOIDABLE DUTY TO INSURE CITIZENS' CONSTITUTIONAL RIGHTS AND GUARANTEES AND INSISTS THE GOVT MUST PROVIDE INFORMATION REQUESTED BY THE COURTS. UNDER ARGENTINE LAW, THE GOVT PROSECUTOR CAN APPEAL THIS VERDICT.  
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